ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235
	)	
and	)	
	)	
Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services	)	

To: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR PARTIAL RECONSIDERATION AND REQUEST FOR CLARIFICATION

Kenwood Communications Corporation (Kenwood), by counsel and pursuant to Section 1.429(g) of the Commission's Rules [47 C.F.R. §1.429(g)], hereby respectfully submits its reply to certain of the oppositions and comments of others in response to Kenwood's Petition for Partial Reconsideration and Request for Clarification relative to the *Second Report and Order*, FCC 97-61, released March 12, 1997 in the captioned proceeding. Kenwood's reply is addressed exclusively to the consolidated "Comments of Forest Industries Telecommunications on Petitions for Reconsideration" ("FIT"), and the "Comments of UTC on Petitions for Reconsideration" ("UTC"),

each filed on or about June 19, 1997.[1] For its reply, Kenwood states as follows:

I. Reservation of Channels During Trunking Application Period

1. UTC and FIT each oppose the AMTA plan for maintaining the *status quo* on certain selected channels while a VHF/UHF trunking applicant seeks concurrences from the affected existing users. FIT objects to the plan, arguing that it allows what it refers to as "lock-outs" by speculators relative to PMRS applicants with legitimate needs for private systems. UTC suggests that the "freeze" of licensing on a group of channels should be limited to channels that can otherwise be coordinated for use at a particular site, and limited to currently licensed stations, so as to avoid the "land-rush" mentality that would accompany the unrestricted ability of newcomers seeking licensing opportunities.

2. These comments are well-taken, and evidence what Kenwood has suggested in its Petition for Partial Reconsideration: that the consent requirement, with its inherent delays and the lack of incentive by incumbent licensees to consent, makes almost any application procedure unworkable. The channel assignments become a moving target for the trunking applicant, and at the same time place the incumbent user in a "circle the wagons" posture.

3. Kenwood agrees with UTC and FIT that there must be safeguards against speculative plundering of the VHF and UHF bands, and, as it has stated in the past, Kenwood firmly agrees that the

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[1] These pleadings were served on counsel for Kenwood by mail, and as such, pursuant to Section 1.429 and 1.4 of the Commission's Rules, this reply pleading is timely filed.

same spectrum must be protected for private eligibles. One solution to the UTC/FIT concerns would be for the Commission, under the AMTA substitute proposal, enact limits on the number of VHF/UHF trunked applications one could file at a given time, and at the same time enact protective measures against filing applications without disclosure of the real party-in-interest and the like.

4. However, Kenwood continues to maintain that consent of all co-channel and adjacent channel licensees in a particular geographic area is simply unobtainable as a practical matter. Trunked applicants should have significantly greater flexibility than is provided under the enacted rules to target a pool of frequencies in order to attempt the difficult or impossible task of obtaining concurrence. Kenwood respectfully disagrees with UTC that a coordinator hold on certain channels should be limited to channels already licensed. Kenwood's "constituency" of both private and private carrier licensees have long sought the opportunity to realize the efficiency and enhanced competitiveness that comes from trunking existing channels, and expanding systems for capacity needs. Frequency pairs in the UHF and VHF bands below 800 MHz do not have the luxury of large separations between transmit and receive frequencies, and therefore suffer limitations in the frequencies that can be combined in one trunking system at a single site. These limitations are related to combining, antenna placement, and tower space considerations. Trunked proponents should have the right to mix both currently licensed channels and new channels in the same application, in order to obtain a

practical technical mix of channels to trunk at one site. If it is necessary, the Commission could enact measures to strictly limit the amount of new spectrum one could "reserve" during the consent/application process so as to maintain the *status quo* during that limited period, such limits would address FIT/UTC's concern about speculative reservations and "land rush" mentalities.

II. Consent Unanimity and Alternatives Thereto

5. FIT, at page 3 of its filing, and UTC, at page 7, each oppose a less-than-unanimous consent provision relative to incumbent licensees to be obtained by VHF/UHF trunking proponents. Each, as well, oppose a monitor study as an alternative to a unanimous consent requirement. Addressing the second matter first, Kenwood suggested that monitor studies be used in lieu of concurrence principally because of the relatively large number of "dormant" licenses. It should be apparent to anyone familiar with actual operating circumstances that there are many "paper licenses" outstanding due to licensee relocation, cessation of business, non-construction, construction at less than maximum authorized facilities, and the like. Kenwood recommends that a Commission-authorized procedure for channel monitoring be developed by which dormant or non-existent stations could be identified, and by which a lack of interference potential could be identified, that would vitiate the consent requirement. This would permit the trunking proponent to certify to the coordinator(s) that certain licensees have been determined to be no longer active or operational and therefore consent is unnecessary. This would facilitate a laborious

consensual process and have the added benefit of clearing paper licenses from the Commission's and the coordinator's databases. Kenwood's petition also recommended that any subsequent interference resolution should be the exclusive responsibility of the trunked applicant.

6. Certainly, the less-than-unanimous consent provision suggested by Kenwood was not intended to cast the minority of those who might refuse consent in the posture of having to suffer adverse consequences. There would have to be an engineering showing made as a substitute for the consent relative to the interference potential to incumbent users who do not consent. That showing could be done through monitoring studies, or calculation of interference parameters through other methods. Kenwood is especially sensitive to the licensees involved in seasonal, periodic or contingent operations, especially those related to public safety. These licensees must be given all necessary consideration. Since "primary activity" is already a part of the license records, these users could be identified and their needs addressed by the coordinator in accepting a trunking applicant's certification. A coordinator could request a further reasonable showing that these licensees do not in fact exist or have stopped operation, if there is doubt in a particular case.

III. A Unanimous Consent Requirement Remains Unworkable

7. Kenwood's support of the AMTA proposal for a 120-day "hold" on a channel by a trunking proponent was based on a perceived need to prevent speculators and competitive entities from filing on a

trunked applicant during consent negotiations. These applications would be public information, and susceptible to anticompetitive actions of others, or purely speculative efforts to extort compensation from a trunked applicant. Some amount of time, during which there is protection from such actions, is necessary to allow completion of the consent process and finalize agreements.

8. This illustrates the difficulty with the consent requirement at the outset. The agreements are stymied by the large number of co-channel and adjacent channel licensees; the varied size and operational needs of licensees in different markets; the varying investment and deployment of existing equipment; the varied types of licensees and different levels of technical understanding.[2] The consent requirement is not a normal business transaction, as it is asking for something for which compensation is not envisioned. The current public view of radio spectrum is that it has unlimited value, and any licensee unschooled in the technical issues involved will fear loss of rights or entitlements, and simply will not consent. The consent process is complex, involving issues of multiple approvals (especially with government, public safety, or large corporate licensees). There are impact studies to be conducted, financial and operational considerations, legal reviews, various hierarchies of corporate approvals and policy decisions, technical proof of interference potential,

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[2] These include community repeater and private carrier operations, private businesses, special industrial users, government entities, and public safety issues. Community repeaters alone may have a dozen licensees, each of whom presumably would have to consent.

coverage reductions, reliability impact, access issues, and control problems. The Commission has established a two-year period for incumbent 800 MHz licensee relocation negotiations. A substantial negotiation period in which newcomers could not be allowed to upset the delicate process is needed, if any consent requirement could be workable at all.

9. At the very least, if any consent requirement is to remain, it must be modified. An applicant should be allowed to file before the consents are obtained. The applicant should be protected from later-filed applications during the negotiation period. There should be protection for the trunked licensee after the trunking authority is granted. And the Commission should provide information to licensees about the consent process to establish that a trunking consent request is normal and reasonable, and that incumbent licensees cannot unreasonably withhold consent. Finally, there must be an alternative to the consent requirement to prevent the tyranny of the minority in the process.

Therefore, the foregoing considered, Kenwood Communications Corporation respectfully requests that the Commission reconsider, revise and clarify the VHF and UHF trunking regulations set forth

in the Second Report and Order in accordance with Kenwood's Petition for Partial Reconsideration and Request for Clarification in connection with the foregoing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret Imlay & Tepper, P.C., do certify that copies of the foregoing REPLY TO OPPOSITIONS TO PETITION FOR PARTIAL RECONSIDERATION AND REQUEST FOR CLARIFICATION were mailed this 2nd day of July, 1997, via U. S. Mail, postage prepaid, first class, to the offices of the following:

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